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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,085	05/18/2004	Garry Tsaor		5652

29745 7590 03/16/2005

JOE NIEH  
18760 E. AMAR ROAD #204  
WALNUT, CA 91789

EXAMINER

SIPOS, JOHN

ART UNIT PAPER NUMBER

3721

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/849,085

Applicant(s)

TSAUR, GARRY

Examiner

John Sipos

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### ***REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS***

The following is a quotation of the second paragraph of 35 U.S.C. ' 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 12-17** are rejected under **35 U.S.C. ' 112, second paragraph**, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 12-14 are dependent on and duplicate of claims 8-10 and similarly claims 15-16 are dependent on claims 8-14 and are duplicates of claims 8-10 and 12-14.

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### ***REJECTIONS OF CLAIMS BASED ON PRIOR ART***

The following is a quotation of 35 U.S.C. ' 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 1** is rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Seifert (5,035,348). The patent to Seifert shows the forming of a fluid dispenser comprising heat-sealing one end of the tube 14, filling the tube, sealing the other end of the tube 17 and affixing an applicator 32 at one end of the tube (column 2, line 62 et seq.).

The use of fixtures to hold a plurality of containers (claim 1); the removal of excess liquid from a container (claims 3 and 5), more than one substance in a single container (claim 4-

7) and the centrifuge of a container (claims 6 and 7) are well known in the art and the Examiner takes official notice that their use is common knowledge in the packaging art. In the above cases the modification of the Seifert operation would have been obvious to one skilled in the art for the known benefits of each modification. For example, the use of fixture allows the handling of more than one container; removing excess liquid allows the forming of a better seal at the container end; the use of more than one substance permits the packaging of mixable products; and centrifuge of the container permits the mixing of the container.

**Claim 2** are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Seifert (5,035,348) in view of Baibridge (1,641,408). The patent to Seifert lacks the use of score line but does disclose the use different container materials as weakening means to ease the opening of the container (see column 3, line 58 et seq.). The patent to Bainbridge shows the use of score line 3 in a small container that permits the user to easily open the container. It would have been obvious to one skilled in the art to substitute the score line opening means of Bainbridge for the opening means of Seifert in order to simplify the opening mechanism and not require different materials for different parts of the container.

**Claims 3-7** are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Seifert (5,035,348) in view of Baibridge (1,641,408).

The removal of excess liquid from a container (claims 3 and 5), more than one substance in a single container (claim 4-7) and the centrifuge of a container (claims 6 and 7) are well known in the art and the Examiner takes official notice that their use is common knowledge in the packaging art. In the above cases the modification of the Seifert operation would have been obvious to one skilled in the art for the known benefits of each modification. For example,

removing excess liquid allows the forming of a better seal at the container end; the use of more than one substance permits the packaging of mixable products; and centrifuge of the container permits the mixing of the container.

**Claims 8-17** are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Seifert (5,035,348).

The removal of excess liquid from a container (claims 3 and 5), more than one substance in a single container (claim 4-7) and the centrifuge of a container (claims 6 and 7) are well known in the art and the Examiner takes official notice that their use is common knowledge in the packaging art. In the above cases the modification of the Seifert operation would have been obvious to one skilled in the art for the known benefits of each modification. For example, removing excess liquid allows the forming of a better seal at the container end; the use of more than one substance permits the packaging of mixable products; and centrifuge of the container permits the mixing of the container.

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### ***ADDITIONAL REFERENCES CITED***

The cited prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

Note the patent to Brown shows a process of handling of small tubes comprising sealing one end of a tube (Fig 1A), filling the tube with a pharmaceutical (Fig. 1C) and sealing the other end of the tube (Fig. 1D and E) to form a dispensing opening.

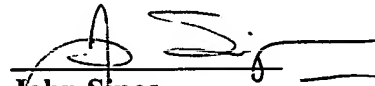
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4468**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9306**.

  
**John Sipos**  
**Primary Examiner**  
**Art Unit 3721**

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